

**FEDERAL HOME LOAN MORTGAGE CORPORATION,**  
**Plaintiff,**

**WILLIAM E. KANTZ, JR.,  
Defendant,**

**V.**

**FLEX YIELD INVESTMENTS, LLC,  
Intervenor,**

**FEDERAL HOUSING FINANCING  
AGENCY, on its own behalf and as  
conservator of FEDERAL HOME LOAN  
MORTGAGE CORPORATION,  
Intervenor-Defendant and  
Real Party in Interest,**

**RUBIN LUBLIN TN, PLLC.**  
**Intervenor-Defendant.**

Case 3:15-cv-00932 Document 89 Filed 01/29/16 Page 1 of 4 PageID #: 1642

and Bank of America's Motion to Dismiss Counterclaim and Strike Third Party Complaint. (Doc. 34).

In support of this motion Mr. Kantz would state he has filed a Motion for Leave to file an Amended Amend and Amended Counter-Claim. Mr. Kantz has further researched this case and uncovered that Tennessee law specifically allows him to assert "wrongful foreclosure" as a defense to a claim for possession which is the sole basis for Defendant Freddie Mac's claim against him in the Davidson County General Sessions Detainer Warrant. As the right to possession was not raised nor addressed in the previous litigation, such a claim or defense cannot be subject to *res adjudicata*. "There is absolutely no doubt that wrongful foreclosure can be raised as an affirmative defense to an unlawful detainer action brought by the purchaser of property in foreclosure. *Citifinancial Mortgage Co., Inc. v. Beasley*, No. W2006-00386-COA-R3-CV, 2007 WL 77289 at \*5 (Tenn. Ct. App. Jan. 11, 2007); *Federal Nat'l Mortgage Ass'n v. Robilio*, No. W2007-01758-COA-R3-CV, 2008 WL 2502114 at \*5 (Tenn. Ct. App. June 24, 2008). "Where title bears directly upon the right of possession . . . a party may legitimately interpose the issue." *Beasley*, 2007 WL 77289 at \*6. It is the purchaser's "constructive entry" onto the premises through the title obtained in foreclosure that "provides the basis for maintaining the unlawful detainer action." *Id.* at \*7. *Davis v. Williams*, E2010-01139-COA-R3-CV (Tenn. Ct. App. Jan. 31, 2011). The issue of *possession* of Mr. Kantz's Property was not raised in the previous litigation and therefore can and should be raised in this matter.

The intervention of FYI and the plethora of pleadings between the Defendants and FYI have uncovered the Defendant's numerous fraudulent tactics and legal malfeasance related to the handling of the faked foreclosure sales. Mr. Kantz seeks leave to amend his responses to conform to the newly discovered evidence and the Defendants' admissions.

Therefore, Mr. Kantz prays:

1. That he be allowed to amend his Response to the Defendants' Motion to Strike and Motion to Dismiss; and,
2. And for whatever relief the Court deems appropriate and just.

Respectfully submitted:

\_\_\_\_\_/s/\_\_\_\_ James D. R. Roberts, Jr.\_\_\_\_\_  
Roberts & Associates, Attorneys at Law  
James D. R. Roberts, Jr., #017537  
1700 Hayes Street, Suite 201  
P. O. Box 331606  
Nashville, Tennessee 37203  
(615) 242-2002 office / (615) 242-2042 facsimile  
Attorneys for William E. Kantz, Jr.  
Jim.Roberts@RobertsandAssociatesLaw.com

### **Certificate of Service**

I certify a copy of this Amended Answer and Counter-Claim has been served on January 29, 2016 on the following via the Court's ECF to:

H. Buckley Cole  
Fifth Third Center  
424 Church Street, Suite 2950  
Nashville, Tennessee 37219

Randall S. Bueter  
Wilson & Associates, PLLC  
1521 Merrill Drive, Suite D-220  
Little Rock, Arkansas 72211

Gerald D. Morgan  
Wilson & Associates, PLLC  
8 Cadillac Drive  
Suite 120  
Brentwood, Tennessee 37027

Scott D. Johannessen

Law Offices of Scott D. Johannessen  
424 Church Street, Suite 2000  
Nashville, Tennessee 37219

Rick Humbracht  
Bradley Arant Boult Cummings, LLP  
1600 Division Street, Suite 700  
Nashville, Tennessee 37203

\_\_\_\_/s/\_\_\_\_ James D. R. Roberts, Jr.\_\_\_\_